

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE FEBRUARY 1997 SESSION

FILED

May 16, 1997

Cecil W. Crowson
Appellate Court Clerk

MICHAEL SINIARD,)	MAURY CIRCUIT
)	
Plaintiff/Appellant)	NO. 0S01-9609-CV-00175
)	
v.)	HON. JIM T. HAMILTON,
)	JUDGE
SATURN CORPORATION,)	
)	
Defendant/Appellee)	

For the Appellant:

J. Anthony Arena
Schulman, LeRoy & Bennett, P.C.
501 Union Building, 7th Floor
P. O. Box 190676
Nashville, TN 37219-0676

For the Appellee:

Thomas H. Peebles, IV
Brian A. Lapps, Jr.
Waller Landsen Dortch & Davis, PLLC
809 South Main Street, Suite 300
Post Office Box 1035
Columbia, TN 38402-1035

MEMORANDUM OPINION

Members of Panel

Justice Frank F. Drowota, III
Senior Judge William H. Inman
Special Judge William S. Russell

AFFIRMED

INMAN, Senior Judge

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The plaintiff, age 43, remains employed by Saturn Corporation, where he began in 1990. He developed carpal tunnel syndrome in both wrists in 1994 and was provided with splints, medication, and access to physical therapy.

In time the plaintiff was referred to Dr. James Wiesman, an orthopedic surgeon, who performed a carpal tunnel release on his right hand. He returned to work for Saturn which assigned him a job not involving repetitive use of his hands.

The plaintiff filed this complaint seeking benefits for a permanent partial disability occasioned by the asserted impairment caused by the carpal tunnel syndrome. The trial judge awarded benefits based on a finding of ten percent permanent partial disability to his right arm. The plaintiff appeals, insisting the award is inadequate for the reasons hereafter discussed.

The treating physician testified that the release surgery was successful and that the plaintiff retained a two (2) percent impairment to his right arm.

The plaintiff was referred by his attorney to Dr. David W. Gaw, also an orthopedic surgeon, for evaluation. Dr. Gaw saw the plaintiff only on one occasion. He conducted various tests and concluded that the plaintiff had a ten percent permanent partial impairment to his right arm. He disdained as unauthorized by the *AMA Guides* an evaluation of two (2) percent impairment as found by Dr. Wiesman.

Our review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(e)(2). *Stone v. City of McMinnville*, 896 S.W.2d 584 (Tenn. 1991).

The plaintiff criticizes Dr. Wiesman for his alleged failure to use the *AMA Guides*. While Dr. Wiesman apparently was not enamored by the *Guides*, he testified that "I used those *Guides*," and that "I did the impairment rating based on

one, my experience, based on two, the TABLE 16 GUIDELINES, and my evaluation of the patient.

“The physician’s judgment and his or her experience, training, skill, and thoroughness in examining the patient and applying the findings to *Guides* criteria will be factors in estimating the degree of the patient’s impairment. These attributes compose the ‘art’ of medicine, which together with a foundation in science, constitute the essence of medical practice. The evaluator should understand that other considerations will also apply, such as the sensitivity, specificity, accuracy, reproducibility, and the interpretation of laboratory tests and clinical procedures, and variability among observers’ interpretations of the tests and procedures.

American Medical Association Guides to the Evaluation of Permanent Impairment, 4th Ed., at 3 (§ 1.3).

The *Guides* are not the sole determining factor in setting an award of vocational disability. In making determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee’s age, education, skills and training, local job opportunities and capacity to work at types of employment available in claimant’s disabled condition. TENN. CODE ANN. § 50-6-241(a)(1). It is abundantly clear in this record that the trial court considered all of these factors, in addition to one involving the credibility of the plaintiff, whom the evidence reveals was less than candid about the extent of any residual difficulties in the use of his right arm. Moreover, the trial court was within his discretion in finding Dr. Wiesman’s opinion to be of greater worth than Dr. Gaw’s. See *Hinson v. Wal-Mart Stores*, 654 S.W.2d 675 (Tenn. 1983).

The appellant next insists that it was error to allow extrinsic evidence of specific instances of conduct for the purpose of attacking his credibility. This argument refers to the testimony of a therapist, Steve McClellan, who performed a functional capacity evaluation of the plaintiff.

It is insisted that this testimony was improperly adduced solely for the purpose of attacking the credibility of the plaintiff. Mr. McClellan testified that the plaintiff revealed no indication of illness behavior, and he believed there was a degree of symptom exaggeration. The appellant equates this opinion to an attack on his credibility by way of a specific instance, in contravention of RULE 608, TENNESSEE RULES OF EVIDENCE. We do not agree. The functional capacity evaluation is a

useful, sometimes revealing, procedure relevant to a determination of impairment. The fact that this procedure may indicate symptom magnification or exaggeration and to that extent necessarily reflect on the plaintiff's credibility, does not run it counter to RULE 608.

The evidence does not preponderate against the judgment, which is affirmed at the costs of the appellant, and the case is remanded for all appropriate purposes.

William H. Inman, Senior Judge

CONCUR:

Frank F. Drowota, III, Justice

William S. Russell, Special Judge

IN THE SUPREME COURT OF TENNESSEE

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MICHAEL SINIARD,
Plaintiff/Appellant

vs.

SATURN CORPORATION,
Defendant/Appellee

} MAURY CIRCUIT
} No. 6795 Below
} Cecil W. Crowson
} Appellate Court Clerk
} Hon. Jim T. Hamilton,
} Judge
} No. 01S01-9609-CV-00175
} AFFIRMED.

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by Plaintiff/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on May 16, 1997.

PER CURIAM